

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application

Appellants:	Symons, et al.	Confirmation No.	2920
Application No.:	09/971,857	Group Art Unit:	2151
Filed:	October 4, 2001	Examiner:	Divecha, K.

For: Method for describing and comparing data center physical and logical topologies and device configurations

Reply Brief

In response to the Examiner's Answer mailed on April 15, 2008, Appellants respectfully submit the following remarks.

REMARKS

Appellants are submitting the following remarks in response to the Examiner's Answer. In these remarks, Appellants are addressing certain arguments presented in the Examiner's Answer. While only certain arguments are addressed in this Reply Brief, this should not be construed that Appellants agree with the other arguments presented in the Examiner's Answer.

Regarding the Examiner's Response to Argument

c. At page 18 and 19 with respect to argument c. of the Examiner's response, the Response submits that Arkko teaches or suggests the claimed feature, "A method for managing a switched network infrastructure comprising: storing an expected network infrastructure description of a network having a switched infrastructure without requiring hubs, said network having a data center..." (emphasis added).

Appellants respectfully disagree with the present assertion. That is, Appellants respectfully submit that the "network having a switched infrastructure without requiring hubs" words of the claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983). Moreover, the present terminology is clearly defined in the Specification and the Figures of the intrinsic record.

For example, paragraph [0024] clearly provides, "A switched network allows data center operators to control network connectivity at a more granular level by programming configurations into each switch which determine the connections between devices. For example, the data center operators can create virtual topologies in which certain devices, though physically connected to the entire network, can communicate only with other designated devices. The logical topology of the network can, for example, be changed using the switches without physically touching any wiring. A switched network allows gathering an inventory of network devices because each device can be located and identified according to the port to which it is connected. A switched network enhances network security as physical

access and the programming of the switch can be restricted to the data center operators” (emphasis added).

In contrast, Appellants understand Arkko to teach the utilization of a Network Access Server (NAS) in association with a telecommunications switches, Plain Old Telephone Service (POTS) phone lines, Integrated Services Digital Network (ISDN) lines and the like.

Further, the cited portion of the Summary of the Invention of Arkko as provided on page 19 of the Reply Brief include: expected network topologies, processing devices interconnected via an Ethernet network and include a router that is a gateway to the internet.

However, a rejection based on section 103 must rest upon a factual basis rather than conjecture, or speculation. "Where the legal conclusion [of obviousness] is not supported by the facts it cannot stand." In re Warner, 379 F.2d 101 1, 1017, 154 USPQ 173, 178 (CCPA 1967). See also In re Lee, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002) and In re Kahn, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006).

As such, Appellants respectfully submit that the statement at the bottom of page 19, “In Arkko, there is no suggestion and/or any hint of the usage of hubs in the network environment” is based on speculation and less than a preponderance of evidence.

Conclusion

In view of the above remarks and for the reasons previously presented in the Appeal Brief and prior Office Action responses, Appellants continue to assert that pending Claims 1-27 are directed toward patentable subject matter.

Appellants' further wish to encourage the Examiner or a member of the Board of Patent Appeals to telephone the Appellants' undersigned representative if it is felt that a telephone conference could expedite prosecution.

Respectfully submitted,
Wagner Blecher LLP

Dated: 06/16/2008

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